

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARIA RIVERA §
§
V. § CIVIL ACTION NO. 5:21-cv-291
§ JURY DEMANDED
§
MARMAXX OPERATING CORP. §

DEFENDANT MARMAXX OPERATING CORP.'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Marmaxx Operating Corp. files its notice of removal of this civil action to the United States District Court for the Western District of Texas, San Antonio Division. In support of this Notice of Removal, Defendant respectfully shows as follows:

1. On February 5, 2021, Plaintiff filed her Original Petition in Cause No. 2021CI02440; *Maria Rivera v. Marmaxx Operating, Corp.*, in the 166th Judicial District Court of Bexar County, Texas, naming as the Defendant Marmaxx Operating Corp. Plaintiff's return of service indicates that Citation was served on February 22, 2021. *See Exhibit A*, an index of documents filed in the state court proceeding. Therefore, Defendant's notice of removal is timely under 28 U.S.C. § 1446(b).

2. True and correct copies of all documents filed in the state court proceeding are attached hereto and incorporated herein by reference. *See Exhibit A*. Defendant reserves the right to supplement its response with certified copies of documents filed in the state court. Attached as Exhibit B is a list of all counsel of record.

3. Defendant would show that this case is removable under 28 U.S.C. § 1441, and the Court has jurisdiction over this matter, because this suit involves a controversy between citizens of different states and the amount in controversy, exclusive of interests and costs, exceeds \$75,000.00. *See* 28 U.S.C. §§ 1332 and 1441.

4. There is complete diversity between the parties. At the time of the filing of this action, and at the time of removal, Plaintiff was and is a citizen of the State of Texas. Defendant Marmaxx Operating Corp., the entity that owns and operates the store where the incident occurred, was and is a corporation incorporated under the laws of the State of Delaware, with its principal place of business at 770 Cochituate Rd., Framingham, MA 01701.

5. The matter or amount in controversy in this suit exceeds the sum of \$75,000.00, exclusive of interest and costs. In her Original Petition, Plaintiff seeks damages “\$250,000 or less.” *See* paragraph II in Plaintiff’s Original Petition, attached as part of Exhibit A.

6. In her Original Petition, Plaintiff claims she suffered serious bodily injuries as a result of Defendant’s alleged negligence. *See* paragraphs V and VI in Plaintiff’s Original Petition, attached as part of Exhibit A. Plaintiff further alleges damages including: medical and healthcare expenses in the past and future; physical pain in the past and future; mental anguish in the past and future; and physical impairment in the past and future. *See* Paragraph VIII of Plaintiff’s Original Petition, attached as part of Exhibit A.

8. This Notice of Removal will be provided to Plaintiff by service of a copy upon her counsel of record, in accordance with 28 U.S.C. §1446(d). Further, a copy of this Notice of Removal will be filed with the District Clerk of Bexar County, in accordance with 28 U.S.C. §1446(d).

9. Therefore, Defendant Marmaxx Operating Corp. prays that this cause be removed from the 166th Judicial District Court of Bexar County, Texas, to this Court, and for all other relief to which Defendant may be entitled.

Respectfully submitted,

HARTLINE BARGER LLP

/s/ Kevin B. Tompkins

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**ATTORNEYS FOR DEFENDANT,
MARMAXX OPERATING CORP.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served upon the parties listed below by the method(s) indicated on the 23rd day of March, 2021.

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